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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,916	02/12/2002	Robert H. Drake JR.	11-912	4237
7590 07/15/2004				
NIXON & VANDERHYE P.C. 1100 North Glebe Road, 8th Floor Arlington, VA 22201-4714				
		EXAMINER JUSKA, CHERYL ANN		
		ART UNIT PAPER NUMBER 1771		

DATE MAILED: 07/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/072,916	Applicant(s) DRAKE, ROBERT H.	
	Examiner Cheryl Juska	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. In view of the Appeal Brief filed on April 13, 2004, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 9, 12, and 13 are rejected under 35 USC 102(b) as being anticipated by US 5,601,910 issued to Murphy et al.

Applicant claims a flooring system comprising:

- (a) a first flooring surface, such as wood, carpet tile, or vinyl tile,

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- (b) a first pressure sensitive adhesive (PSA) substantially directly adhering to said first flooring surface,
- (c) a layer of nonwoven material applied to said PSA and substantially directly adhered thereto and providing a surface substantially impervious to moisture,
- (d) a second carpet installation adhesive, such as a wet laid adhesive, applied to said nonwoven on a side thereof opposite said PSA, and
- (e) carpeting exclusive of said nonwoven adhesively secured to said second adhesive.

The PSA may be latex and include 2-10% by weight of shredded fiberglass, preferably 5-7% fiberglass. The nonwoven material may include stitching and weft reinforcing threads extending generally transverse to said stitching.

Murphy discloses a rug or carpet underlay comprising a nonwoven fabric treated with a finish to render said fabric substantially impervious to liquids and coated on one or both sides with a pressure sensitive adhesive (abstract, col. 5, lines 41-56, and col. 8, lines 60-62). The underlay is for use on wood floors or carpet (col. 1, lines 10-12). Thus, claims 1 and 2 are anticipated by the cited Murphy patent.

With respect to claims 3 and 9, the coating of PSA on the second side of the underlay meets the present limitation that the second adhesive is a "wet laid adhesive" (i.e., applied in solution form, as opposed to extruded melt or powder form). Hence, claims 3 and 9 are rejected.

With respect to claims 12 and 13, Murphy teaches the PSA of conventional underlays comprises an emulsion adhesive, such a synthetic rubber latex (col. 1, lines 38-49). Therefore, claims 12 and 13 are also anticipated.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4-6, 10, 11, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Murphy patent in view of US 5,852,119 issued to Kojima et al. and/or US 5,536,778 issued to Kreckel et al.

Murphy does not explicitly teach a latex adhesive having shredded fiberglass filler as presently claimed. However, said adhesives are known in the art. For example, Kreckel teaches fillers, such as glass fibers, are especially useful in acrylic based PSA's (col. 1, lines 19-24). Additionally, Kojima teaches a PSA containing additives, such as glass fiber filler, in an amount of upto 200 parts by weight per 100 parts by weight the adhesive polymer (col. 7, line 66-col. 8, line 7). Thus, it would have been obvious to one skilled in the art to employ a fiberglass filler in the PSA of the Murphy invention in order to decrease the amount of PSA employed and/or to improve the moisture resistance of the PSA. Therefore, claims 4-6, 10, 11, and 14 are rejected as being obvious over the cited prior art.

6. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Murphy patent.

While Murphy teaches employing the underlay over wall-to-wall carpeting or other carpets and decorative wood flooring, the reference fails to explicitly teach carpet or vinyl tiles. However, it would have been obvious to one skilled in the art to employ said underlay over the

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presently claimed flooring materials. Specifically, wall-to-wall carpeting encompasses broadloom and carpet tiles, while vinyl flooring is an obvious alternative to decorative wood flooring. Thus, one skilled in the art would readily understand the Murphy underlay would be suitable for placement over other flooring materials not explicitly taught, such as linoleum, vinyl tile, carpet tile, and/or ceramic tile. Therefore, claims 7 and 8 are rejected as being obvious over the cited prior art.

7. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Murphy patent in view of US 4,976,118 issued to Tough.

Murphy fails to explicitly teach the claimed stitchbonded nonwoven material. However, said materials are well known in the art of carpet underlays. Specifically, Tough discloses a stitchbonded creped paper sheet having reinforcing weft threads suitable for use as a carpet underlay (abstract, col. 2, lines 37-59, and Figure 4). Thus, it would have been obvious to one skilled in the art to substitute the known stitchbonded underlay of Tough for the nonwoven underlay of Murphy since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. Therefore, claims 15 and 16 are rejected as being obvious over the cited prior art.

Conclusion

8. The art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Any inquiry concerning this communication or earlier communications from the

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examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CHERYL A. JUSKA
PRIMARY EXAMINER



TERREL MORRIS
SUPERVISORY PATENT EXAMINER
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cj
July 12, 2004